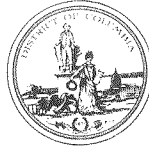


GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15307 of Lester Foote, pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 for a change of nonconforming use from grocery store to a grocery/carryout on the first floor in an R-4 District at premises 1923 Lincoln Road, N.E. (Square 3532, Lot 142).

HEARING DATE: May 23, 1990
DECISION DATE: June 6, 1990

ORDER

FINDINGS OF FACT:

1. The project is located at the southeast corner of the intersection of Todd Place and Lincoln Road and is known as premises 1923 Lincoln Road, N.E. It is zoned R-4.

2. The property is improved with a two-story brick semi-detached building which was constructed in approximately 1918.

3. The site is irregularly shaped with a frontage of 22.17 feet along Lincoln Road, a frontage of 65.16 feet along Todd Place and a frontage of 34.76 feet along the 10-foot wide public alley to the rear of the site.

4. The area surrounding the subject site is generally developed with single-family row dwellings, flats and apartments. St. Martin's School is located in the same square. Langley Junior High School and McKinley High School are located approximately one block southeast of the site.

5. The first floor of the subject site was previously operated as a retail grocery store. The second floor contains an apartment with a separate entrance accessible from Todd Place.

6. The applicant purchased the property in approximately April 1989 for the purpose of operating a grocery store with carryout Chinese food and sandwiches. On September 6, 1989, Certificate of Occupancy No. 1891336 was issued to permit the operation of a grocery/carryout at the subject premises.

7. By letter dated December 6, 1989, the D.C. Department of Consumer and Regulatory Affairs (DCRA) informed the applicant that Certificate of Occupancy No. 1891336 was issued in error. The DCRA advised the applicant that if he wished to operate a grocery/carryout at the subject premises, he would have to seek appropriate zoning relief from the Board. The DCRA further informed the applicant that the previously issued Certificate of Occupancy No.

B156744, dated April 19, 1989, which permitted the operation of a grocery store at the subject premises remained in full force and effect.

8. The applicant is seeking special exception relief to allow a change of nonconforming use from a grocery store to a grocery/carryout pursuant to 11 DCMR 2003.

9. The applicant testified that his decision to purchase the subject property was based on his understanding that the proposed grocery/carryout would be permitted. The applicant testified that, based on his experience, the operation of a grocery store alone is not economically viable and that he would suffer a financial loss if the site can not be used for a grocery/carryout.

10. The applicant testified that the hours of operation of the proposed facility would be from approximately 10:30 a.m. to 11:30 p.m., Monday through Friday; from 11:00 a.m. to 12 midnight on Saturday; and from 1:00 p.m. to 6:00 p.m. on Sunday.

11. The applicant testified that the number of full-time employees would be three family members who would most likely reside on the second floor of the premises.

12. Merchandise and supplies would predominantly be brought to the site by the operator. Other deliveries would not likely exceed three times per week, would be limited to the hours of 11:00 a.m. to 3:00 p.m., and parking during loading activities would be on Todd Place which is not as heavily trafficked as Lincoln Road.

13. Trash will be stored in a dumpster on-site with pickup by a private company three to four times per week as necessary. Smaller litter baskets shall be located near the entrance for customer use. The operator would police the area adjacent to the facility for trash and debris at least twice per day.

14. The applicant proposes to offer carryout Chinese food and sandwiches in addition to the convenience groceries. The cooking area will contain a grill. Cooking odor and fumes will be vented from the area through an exhaust pipe to the roof near the north side of the property.

15. The applicant expects that the majority of the facility's clientele will come from the immediate neighborhood and will include residents and students of the nearby schools. The applicant expects that the majority of its clientele will walk to the site. No on-site parking is provided, however, adequate on-street parking is available to accommodate the vehicles of any customers who may drive to the site.

16. The Office of Planning (OP), by memorandum dated May 16, 1990, recommended that the application be denied. The OP was of the opinion that the proposed use would likely have an adverse impact on the surrounding area due to traffic, noise and other conditions. The OP was further of the opinion that the requested relief would not be in harmony with the general purpose and intent of the Zoning Regulations and Map.

17. Advisory Neighborhood Commission (ANC) 5C, by letter dated May 15, 1990, opposed the granting of the application. The ANC was of the opinion that the proposed facility would encourage the decline of property values because of litter, excess traffic and noise; discourage prospective homeowners from buying and living in the area; and undermine the very measures in the Ward 5 Comprehensive Plan that contribute to an orderly, stabilized neighborhood.

18. The record contains several petitions and letters in opposition to the application. Several nearby property owners testified at the public hearing in opposition to the application. The opposition was generally based on the following:

- a. The proposed carry-out would increase traffic congestion, noise and litter; encourage loitering; discourage use of school lunch facilities; and increase crime by operating beyond normal business hours for residential neighborhood.
- b. The lack of on-site parking will create adverse traffic impacts in terms of demand for on-street parking by customers of the facility, increased vehicular and pedestrian traffic, and double parking for deliveries and trash pick-up.
- c. The previously existing grocery store provided a convenient service to the residents of the area and there is no opposition to its continuance. However, carryout usage tends to attract additional people to the area and results in loitering and littering in the neighborhood.
- d. The odors and fumes from the carryout cooking area would adversely affect residents of the row dwellings immediately adjacent to the subject site.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking special exception relief. In order to be granted the requested special

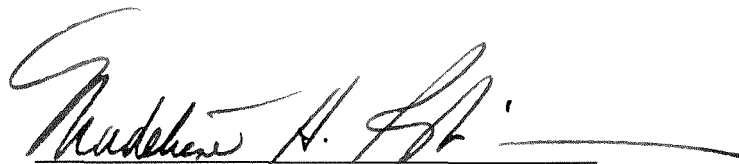
exception, the applicant must demonstrate, through substantial evidence, compliance with the criteria set forth in 11 DCMR 2003 and 3108.1. The Board concludes that the applicant has not met the requisite burden of proof. The applicant's reliance on an erroneously issued Certificate of Occupancy is unfortunate. However, the Board can not base its decision on whether the lawfully permitted grocery store would be as economically attractive as the proposed grocery deli but must deal with the requirements of the Zoning Regulations. The Board is persuaded by the testimony of the opposition that the proposed use would have an adverse impact on the immediate area in terms of traffic, noise, odors, parking and loading considerations.

The Board further concludes that the application can not be granted as in harmony with the general purpose and intent of the Zoning Regulations and that the proposed use would tend to adversely affect the use of neighboring property. The Board has afforded the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to deny; Lloyd D. Smith to deny by proxy; Paula L. Jewell not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

JAN 24 1992

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

ord15307/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL NO. 15307

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this application/appeal dated JAN 24 1992 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

James Berry, Jr., Chairperson
Advisory Neighborhood Commission 5-C
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Washington, D.C. 20002

Devin E. Bassett
112 Todd Place, N.E.
Wash, D.C. 20002

Lester Foote
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D.C. 20002

Jamie Robinson
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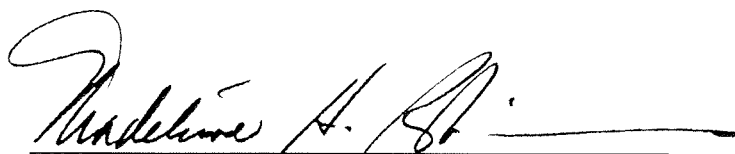
Daniell Robinson
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MADELIENE H. ROBINSON
Acting Director

DATE OF APPROVAL: JAN 24 1992